



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:340. Laboratory certification.

6 RELATES TO: KRS 224.60-110, KRS 224.60-130, KRS 224.60-140

7 STATUTORY AUTHORITY: KRS 224.60-130(1)(a) [(2)(a)]

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) [(2)(a)]

9 requires the establishment of criteria to certify laboratories that contract with owners or operators
10 of petroleum [~~underground~~] storage tanks to perform analytical testing. [~~testing related to~~
11 ~~Kentucky's underground storage tank program.~~] This administrative regulation establishes the
12 requirements for certification and the parameters and methods on which certification shall be
13 granted.

14 Section 1. Applicability. [(1)] A sample required by 401 KAR Chapter 42 shall be
15 submitted to a laboratory certified pursuant to this administrative regulation. This administrative
16 regulation shall apply to analytical testing performed on or after October 1, 1999. An owner or
17 operator of a petroleum [~~underground~~] storage tank [~~system~~] who fails to comply with this
18 requirement shall not be reimbursed by the cabinet [~~fund~~] for costs related to analytical testing
19 and corrective action.

1 ~~[(2) This administrative regulation shall not apply to a site for which the cabinet approved~~
2 ~~an Application for Assistance, pursuant to 401 KAR 42:280, prior to October 1, 1999, unless~~
3 ~~further analytical testing of a sample is required by the cabinet after October 1, 1999.]~~

4 Section 2. Certification Requirements. (1) A laboratory shall demonstrate current
5 accreditation by:

6 (a) The American Association for Laboratory Accreditation for the "Kentucky
7 Underground Storage Tank Laboratory Accreditation Program"; or

8 (b) Any state approved to accredit environmental laboratories to perform ~~[, in accordance~~
9 ~~with National Environmental Laboratory Accreditation Program requirements and standards,]~~ the
10 following tests, in accordance with National Environmental Laboratory Accreditation Program
11 requirements and standards:

12 1. Benzene, toluene, ethylbenzene, xylene and methyl tertiary butyl ether (BTEX,
13 MTBE) in soil and water;

14 2. Polynuclear aromatic hydrocarbons in soil and water;

15 ~~[3. Total recoverable oil and grease in soil and water;]~~

16 3. ~~[4.]~~ Total lead in soil and water;

17 4. ~~[5.]~~ Toxicity characteristic leaching procedures (TCLP) for:

18 a. Metals;

19 b. Volatiles;

20 c. Acid/base/neutrals;

21 d. Pesticides and herbicides;

22 5. ~~[6.]~~ Ignitability;

23 6. ~~[7.]~~ Paint filter test; and

1 7. [8.] pH.

2 (2) A laboratory seeking certification from the cabinet ~~[An applicant]~~ shall submit ~~[to the~~
3 ~~cabinet]~~ a completed “Application for Laboratory Certification”, DEP 6074 (January 2006).
4 ~~["Laboratory Certification Application".]~~ The application shall include proof of accreditation as
5 described in subsection (1) of this section.

6 (3) The cabinet ~~[fund]~~ shall reimburse an petroleum ~~[underground]~~ storage tank owner or
7 operator for the cost of a laboratory analysis if the:

8 (a) Analysis is conducted in accordance with the established parameters and methods;

9 (b) Analysis is required by written directive by the cabinet and performed in accordance
10 with 401 KAR Chapter 42 ~~[state law or administrative regulation];~~ and

11 (c) Laboratory is certified by the cabinet to conduct that analysis.

12 Section 3. Renewal of Certification. A certification shall be valid for two (2) years from
13 the date of issuance by the cabinet. To apply for renewal an applicant shall submit: ~~[An applicant~~
14 ~~for renewal shall submit:]~~

15 (1) An “Application for Laboratory Certification”, DEP 6074 (January 2006) ~~[A new~~
16 ~~application for certification];~~ and

17 (2) Updated documentation demonstrating accreditation by the:

18 (a) American Association for Laboratory Accreditation; or

19 (b) National Environmental Laboratory Accreditation Program.

20 Section 4. Loss of Certification. (1) The cabinet may revoke or suspend a certification if
21 the applicant:

1 (a) Negligently, incompetently, recklessly, or intentionally violates any provision of this
2 administrative regulation, or any state, federal, or local statute, regulation, code or standard
3 concerning the performance of analytical testing;

4 (b) Obtains the certification through fraud or misrepresentation; or

5 (c) Knowingly or intentionally submits false information to owners, operators,
6 contractors, or the cabinet. ~~[fund]~~.

7 (2) A certified laboratory shall maintain accreditation by the American Association for
8 Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for
9 ~~[during]~~ the duration of certification.

10 (3) The cabinet shall, within ten (10) days of this ~~[his]~~ determination, notify a laboratory,
11 in writing, of the suspension or revocation of certification.

12 (4) A laboratory seeking to dispute revocation or suspension shall appeal that decision
13 pursuant to KRS 224.10-420, KRS 224.10-440 and 401 KAR 100:010. ~~[401 KAR 42:320.]~~

14 Section 5. Incorporation by Reference. (1) The following material is incorporated by
15 reference:

16 (a) "Application for Laboratory Certification", DEP 6074 (January 2006) ~~[The Office of~~
17 ~~the Petroleum Storage Tank Environmental Assurance Fund "Laboratory Certification~~
18 ~~Application" (January, 1999), Public Protection and Regulation Cabinet;]~~

19 (b) The American Association for Laboratory Accreditation's, "Kentucky Underground
20 Storage Tank Laboratory Accreditation Program Requirements" (September 2005). ~~[(July 1999);~~

21 ~~(c) National Environmental Laboratory Accreditation Program (NELAP): Recognized~~
22 ~~Accrediting Authorities; and~~

23 ~~(d) Address of the American Association for Laboratory Accreditation.]~~

1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
2 law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,
3 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays and may
4 also be obtained on the Division of Waste Management's web page located at
5 www.waste.ky.gov.

401 KAR 42:340 is approved for filing.

4-12-2006

Date

John W. Clay
John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
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Frankfort, KY 40601
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Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:340

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the requirements for laboratory certification, including the parameters and methods on which certification is granted.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for laboratory certification and the parameters and methods on which certification will be granted.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing a laboratory certification program, as required in KRS 224.60-130.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist by establishing the requirements for laboratory certification program described in KRS 224.60-130.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment updates incorporated material and deletes the requirement for an oil and grease analysis.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to delete unnecessary requirements and update the incorporated material.
- (c) How the amendment conforms to the context of the authorizing statutes: KRS 224.60-130 requires the cabinet to promulgate administrative regulations to certify laboratories. This amendment simply deletes an unnecessary requirement and updates information pertaining to laboratory certification.
- (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation adjusts the laboratory certification requirements in order to remain current.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate petroleum underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all eligible owner and operators of petroleum storage tanks. To apply tiering to the amendment would unduly regulate some entities with petroleum storage tanks while not regulating others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:340

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 and 224.60-130 authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect

Expenditures (+/-): No effect

Other Explanation: The cabinet expects no significant impact from this amendment.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:340**

I. This administrative regulation incorporates by reference the "Application for Laboratory Certification", DEP 6074 (January 2006). This document is submitted by companies performing lab analysis to become certified by the Underground Storage Tank Branch.

This document consists of 2 pages.

II. This administrative regulation incorporates by reference the American Association for Laboratory Accreditation's, "Kentucky Underground Storage Tank Laboratory Accreditation Program Requirements" (September 2005). This document is incorporated to require that accredited laboratories be utilized to be eligible for reimbursement of those analytical expenses and to ensure quality control.

This document consists of 9 pages.